

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:23-mc-00115-AB-BFM **Date:** October 3, 2023

Title: *Smartmatic USA Corp., et al. v. Conan James Hayes*

Present: The Honorable Brianna Fuller Mircheff, United States Magistrate Judge

Christianna Howard
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

**Proceedings: (In Chambers) Order to Show Cause Why Motion to
Compel (ECF No. 3) Should Not be Granted**

On September 6, 2023, Petitioners SGO Corporation Limited, Smartmatic International Holding B.V., and Smartmatic USA Corp., filed a Motion seeking to compel non-party witness Conan Hayes (“Respondent”) to respond to a subpoena seeking production of documents, and to another subpoena requiring him to submit to a deposition, in a lawsuit currently pending in the United States District Court for the District of Minnesota: *Smartmatic USA Corp., et al. v. Lindell, et al.*, No. 22-cv-00098-WMW-JFD (D. Minn.). Respondent—who was served with the Motion (ECF No. 12)—did not file a response to the Motion. On September 27, 2023, Petitioners submitted a Notice of Non-Opposition (ECF No. 15), observing that Respondent had not filed an opposition to the Motion, had not produced any documents in response to the document subpoena, and had failed to respond to numerous attempts to confirm his deposition date. Petitioners note that the current discovery cutoff in the underlying action is October 20, 2023. (Mot. at 2.)

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By way of background, Petitioners served the subpoenas on July 21, 2023. Respondent’s deposition was scheduled for August 18, 2023, and his date to produce documents was later extended to September 1, 2023. Respondent did not make any formal objections to the subpoenas; neither did he appear for deposition on August 18, 2023. Later that day he informed counsel for Petitioners that he would be willing to sit for his deposition in the future and to produce documents (Mot. at 5); on August 24, 2023, Respondent informed counsel that he was willing to produce documents and to sit for a deposition on September 26, 27, or 28, 2023. (Mot. at 2.) Petitioners then re-noticed Respondent’s deposition for September 28, 2023, and asked him to produce documents by September 1, 2023. (Mot. at 5.) Respondent failed to respond to that communication and, as of the date of the Motion, had not produced any documents. (Mot. at 2.) Petitioners—who filed this Motion prior to the September 28, 2023, deposition date—state that if Respondent complies with the subpoena “as he represents he will,” they will voluntarily dismiss this action. (Mot. at 2.) As of September 27, 2023, when the Motion was filed, however, Respondent had failed to respond to numerous attempted contacts to confirm the deposition date and had not yet produced any documents. (ECF No. 15 at 2.)

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, a non-party served with a subpoena duces tecum may make objections to the subpoena within 14 days after service or before the time for compliance, if less than 14 days. Fed. R. Civ. P. 45(d)(2)(B). A non-party’s failure to timely make objections to a Rule 45 subpoena generally requires the court to find that any objections have been waived absent unusual circumstances and a showing of good cause. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005).

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In addition, the Central District Local Rules provide that “[t]he failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting . . . of the motion.” C.D. Local R. 7-12. It is well settled that failure to follow a district court’s Local Rules is a proper ground for granting of a motion. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming grant of an unopposed motion to dismiss under a local rule by deeming a pro se litigant’s failure to oppose as consent to granting the motion) (citing *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979)); *Holt v. I.R.S.*, 231 F. App’x 557, at *1 (9th Cir. 2007).

Based on the foregoing, Respondent is **ordered to show cause in writing, no later than October 6, 2023, at 2:00 p.m.**, why this Court should not grant Petitioners’ Motion based on (a) Respondent’s waiver of objections to the subpoenas, and/or (b) his failure to oppose the Motion. Respondent is also reminded of his obligation to **personally appear at the hearing on the Motion, scheduled for October 10, 2023, at 10 a.m., in Courtroom 770 of the Roybal Federal Courthouse.**

Petitioners are ordered to personally serve Respondent with this Order and their Notice of Non-Opposition (ECF No. 15), and to also provide him with email copies of those documents. **No later than 12:00 p.m. on October 4, 2023**, Petitioners shall notify the Court in writing that they have complied with this Order and submit a proof of service along with their Notice.

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Respondent is advised that failure to comply with this Court's Order may result in sanctions being imposed, including, but not limited to, contempt sanctions pursuant to Rule 45(g) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

cc: Counsel of Record

Initials of Preparer: ch